

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 0.23 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of April, two thousand and seven.

PRESENT:

PIERRE N. LEVAL  
JOSÉ A. CABRANES  
REENA RAGGI

*Circuit Judges*

-----X  
UNITED STATES OF AMERICA,

*Appellee,*

v.

No. 06-2408-cr

DAVID ROSA,

*Defendant-Appellant.*

-----X

**APPEARING FOR APPELLANT:**

TIMOTHY W. HOOVER, Assistant Federal Defender, Federal Public Defender's Office for the Western District of New York, Buffalo, NY.

**APPEARING FOR APPELLEE:**

JOEL L. VIOLANTI, Assistant United States Attorney (Terrance P. Flynn, United States Attorney, *on the brief*), United States Attorney's Office for the Western District of New York, Buffalo, NY.

Appeal from a judgment of the United States District Court for the Western District of New York (John T. Elfvin, *Judge*).

**UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the District Court is **VACATED** and the case is **REMANDED** for resentencing.

Defendant-Appellant David Rosa appeals from the 10-month sentence of incarceration imposed on him following his third violation of supervised release. The Government concedes that remand is necessary because the District Court made statements inconsistent with the "parsimony clause" in 18 U.S.C. § 3553(a)—that is, the statutory mandate to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" 18 U.S.C. § 3553(a)(2). We do not reach the question of whether a 10-month sentence for appellant's violation is substantively reasonable.

For the foregoing reasons, the District Court's judgment is **VACATED** and the case is **REMANDED** for resentencing.

FOR THE COURT,  
Thomas Asreen, Acting Clerk

By \_\_\_\_\_